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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of) MM Docket No. 95-31
)
Reexamination of the Comparative)
Standards for Noncommercial)
Educational Applicants)
)
)

To: The Commission

COMMENTS OF CSN INTERNATIONAL
ON
FURTHER NOTICE OF PROPOSED RULE MAKING

CSN International, by its counsel, hereby submits its Comments on the Further Notice of Proposed Rule Making in MM Docket No. 95-31, released October 21, 1998 ("Further Notice"), stating as follows:

CSN International is a non-stock, not-for-profit corporation chartered under the laws of the State of California, and is tax exempt, pursuant to Section 501(c)(3) of the Internal Revenue Code. It was organized in the belief that many of the well recognized social problems in modern American society, such as drug and alcohol abuse, crime, teenage pregnancy, failure of marriages and the breakdown of the family, can be mitigated through educational efforts which explain how such problems arise, how to help prevent them from arising, and how to deal with them if and when they may arise. CSN International seeks to educate people so they can understand how to deal with the personal, family and community issues which confront them in the modern world.

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To achieve its objectives, CSN International produces, publishes, acquires and distributes books, audio tapes, video tapes and films which both address specific social issues and teach an overall approach to life, incorporating social and spiritual values, which people then can use to guide them. Materials are made available on the Internet, as well. CSN International also makes available pre-recorded and live radio and television programming throughout the United States and elsewhere around the world, free of charge, so that teachers and counselors can reach people throughout the day, in their homes, cars or wherever they may be.

CSN International also has been authorized to acquire and operate a number of noncommercial educational ("NCE") radio broadcast stations in various communities located throughout the United States and has applied for authority to construct additional NCE facilities which would serve yet other communities. As an experienced NCE broadcaster and as an applicant which has observed the plethora of filings by other entities, it is well qualified to offer its perspective to the Commission in the course of this rule making proceeding.

CSN International believes that any rules and procedures adopted by the Commission in the instant proceeding must address several critical concerns, to not only select the best qualified applicant in a expeditious and cost-effective fashion, but also to select among applicants in a fashion which will preclude the abuse and cynical gamesmanship which have plagued the Commission when it has sought to make such selections in the past. Particularly in the case of NCE applications, where an organization can be formed and an application filed and prosecuted with little significant expense, the Commission must ensure that only bona fide applicants are granted the authority to obtain NCE broadcast authorizations. The Commission can do so as follows:

First, the Commission must insist that speculative applications, or those filed with little or no concern for the viability of the particular proposal advanced, will be dismissed if the applicant has not even undertaken the elementary steps to ensure that its proposal is viable. If it is shown that the applicant has filed its application without first ascertaining that its proposed site will be available, then that application must be dismissed without providing an opportunity for the applicant to cure such defect. Particularly where a single organization has filed a multitude of applications within an extremely short period of time, its efforts to tie up as many channels as possible without in fact ensuring that any of its proposals could be effectuated simply should not be tolerated. Further, where a single entity has filed 75-100 applications to construct new stations and has no record of actually acquiring and operating a network of such stations, the Commission should again require that the applicant establish that it actually has the resources to construct and operate all of the stations for which it has applied. See, George Edward Gunter, 104 FCC 2d 1363 (Rev. Bd. 1986).

Second, the Commission should not conduct a lottery among applicants. Such a procedure would not only ignore what may be significant differences among several applicants, it would encourage speculative filings on numerous channels by entities which hoped to beat the odds by filing far more applications than they actually intended, or would be able, to operate. If several applicants were evaluated and found to be essentially indistinguishable from a public interest standpoint, then a "tie-breaker" lottery could prove useful, but only after less attractive applicants were weeded out.

Third, the Commission should not adopt and implement a point system in ways which would encourage and reward abuse and gamesmanship by applicants. Service to an "unserved"

community should not be rewarded when it is clear that the applicant's technical proposal was designed to obtain such credit while also providing city-grade coverage to all or a significant portion of a larger, better-served community. Similarly, the Commission should not give any preference to any newly-formed organization which reflects an effort to obtain such preference. Particularly if a group has no prior record of educational service, any effort to present a newly-constructed, custom-made applicant to the Commission should be rejected.

Necessarily, such a policy would deny racial or gender preferences to individuals and organizations which were formed only to acquire FM construction permits. Assuming, arguendo, that the granting of such preferences may be appropriate where an established organization has an established record of service, such preferences should not be granted to newly formed entities when to do so would engender the same type of abuse which characterized the Commission's comparative evaluation process in the past. The Commission is well aware of the numerous "sham" applications which were filed after it decided to give such preferences to commercial FM applicants. Individuals with personal characteristics then deemed attractive to the Commission, most notably members of minority groups and women, were presented as the controlling principals of applicants, while other less-favored individuals recruited those principals, did all of the major work in organizing the applicant entity and preparing the application, and were the ones relied upon to advise the principals and finance the proposed facility. A brief review of Commission and Review Board decisions in the short period between 1985 and 1993 reveals that, at the least, fifty different applicants were found to be fraudulent.¹

¹ A listing of such cases is attached for the convenience of the Commission.

Not only limited partnerships were involved: “consultants” and “administrators” also were found to be the ones who truly controlled the applicants in question. When such a clear pattern of abuse has been established, the Commission cannot simply ignore the past and recommence the same process.²

If the Commission chooses to ignore both the constitutional questions and its own experience, however, then it also must acknowledge that the true nature of each of the “sham” applicants then before it was uncovered only as a result of the hearing process. At the least, therefore, before it provides any such preference to an applicant which is newly formed and/or without a record of educational service, the Commission must permit any competing applicant to depose the principals of such applicant and to obtain the underlying documentation which would establish the bona fide nature of such applicant. The Commission cannot decide to do away with all hearing-type procedures and then make it easy for unscrupulous parties to engage in the conduct which only such procedures can uncover. To do so would only provide a further incentive to those who would improperly and unfairly attempt to manipulate the system.

In any event, where nonprofit organizations may change de facto control merely by electing a new director/trustee, any preference given for the personal characteristics of any

² As the Commission recognized in a comparable context, “Our goal in modifying Form 301 was to streamline and expedite the application process In so doing we hoped to aid the applicant in preparing its application and facilitate the processing of the application by the Commission staff. We believe that our original goal was and is still sound policy. However, based on our experience . . . , we now believe that streamlining the application process may have facilitated the filing of applications by financially unqualified, sham and/or abusive applicants. Report and Order, FCC 89-110, 66 R.R. 2d 519 (1989). The Commission should not repeat the errors of the past when it now attempts to expedite and streamline the filing and processing of Form 340 applications.

member of that organization can be both transient (even if the preference was claimed in good faith) and patently subject to abuse. Indeed, the practical problems of implementing preferences which may be of critical importance in the granting of an application, but of short duration after grant, almost make it unnecessary to point out the Constitutional and historical considerations which have been discussed above. Such problems, of course, would largely be negated if the Commission were to grant such preferences, if at all, only to established organizations which not only had a meaningful record of educational service, but also an established pattern of control by members of minority groups.

As the Commission surely recognizes, all of the situations pointed out above do not reflect mere speculation. In each instance, the behavior feared has been exhibited -- repeatedly-- in the past. The fact that NCE channels may be involved does not render that risk a nullity: too many applications have been filed for the Commission to conclude that these frequencies are not attractive enough to engender the sort of gamesmanship which has characterized the Commission's past efforts to discriminate among the applicants before it. The potential for manipulation is clearly there, and it now is up to the Commission to adopt rules and procedures which are not susceptible to such abuse.

Aside from the foregoing concerns, CSN International offers two additional suggestions which it believes are worthy of consideration. At Paragraph 42 of the Further Notice, dealing with NCE stations operating on commercial channels, the Commission asked, "Should we make it more difficult for stations operating on commercial channels to convert from NCE to commercial operations, if their licenses were first awarded after the effective date of our auction authority?" CSN International finds nothing wrong with the basic idea expressed, but there may

be instances where an NCE licensee acquired authority to operate on a commercial channel without having been preferred over a commercial applicant or avoiding an auction. Although it may not be likely that such instances will often occur, the Commission should make it clear that it will not preclude such a licensee from changing its status if it wishes to do so.

Further, the Commission has in the past resolved mutually exclusive proposals by FM translator applicants and petitioners to amend the FM Table of Allotments by itself finding open and available frequencies which would enable it to grant each of the proposals before it. CSN International recommends that the Commission adopt and implement such a procedure in those instances, too, where mutually exclusive NCE applicants can be accommodated by assigning each of them to a vacant channel in the reserved FM band, even if some applicants do not receive the channel which they initially specified in their applications. The Commission would thereby not only resolve the conflicts before it, it would expeditiously authorize as many new NCE stations as possible (and avoid having the losing applicants instead refile on the open channel and start the process all over again).

In sum, CSN International agrees that the comparative hearing process previously utilized by the Commission to select among mutually exclusive NCE applicants was time-consuming, costly and dependent on factors which had little bearing on distinguishing the quality of service which would be rendered to the public. The Commission should not, however, instead adopt procedures which will be susceptible to manipulation and abuse, just so that it may dispose of the applications before it without further ado. The public interest requires that the Commission resolve matters before it in an efficient and expeditious manner, but the public interest also

demands that the process utilized by the Commission reward NCE entities which truly merit the privilege and responsibility of serving the public.

Within the constraints and with the safeguards discussed above, CSN International agrees with the proposals set forth in the Further Notice, where the Commission suggested that it would give points for local diversity, materially greater coverage of area and population, and service to unserved communities.

Respectfully submitted,

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January 28, 1999

Findings of "Sham" Applicants

Anchor Broadcasting, Ltd., 67 RR 2d 951 (Rev. Bd. 1990)
Annette B. Godwin, 73 RR 2d 376 (Rev. Bd. 1993)
Atlantic City Community Broadcasting, 73 RR 2d 596 (1993)
Breeze Broadcasting Co., Ltd., 72 RR 2d 470 (Rev. Bd. 1993)
Capital City Community Interests, Inc., 62 RR 2d 1452 (Rev. Bd. 1987)
Carta Corp., 67 RR 2d 1591 (1990)
Channel 32 Broadcasting Co., 68 RR 2d 1091 (Rev. Bd. 1990)
Charisma Broadcasting Corp., 69 RR 2d 600 (Rev. Bd. 1991)
City Community Broadcasting, Inc. 68 RR 2d 1419 (1991)
Coast TV, 66 RR 2d 25 (1989)
Coastal Broadcasting Partners, 69 RR 2d 918 (Rev. Bd. 1991)
Doylan Forney, 68 RR 2d 366 (1990)
Emission de Radio Balmeseda, Inc., 71 RR 2d 120 (Rev. Bd. 1992)
Eugene Walton, 70 RR 2d 1595 (1992)
Evansville Skywave, Inc. 69 RR 2d 1529 (1991)
Evergreen Broadcasting Co., 69 RR 2d 1534 (1991)
Fresno FM Ltd Partnership, 70 RR 2d 352 (1991)
Gloria Bell Byrd, 71 RR 2d 1274 (Rev. Bd. 1992)
Imagists, 70 RR 2d 558 (Rev. Bd. 1991)
Isis Broadcast Group, 71 RR 2d 614 (Rev. Bd. 1992)
Jarad Broadcasting Co., Inc., 61 RR 2d 389 (Rev. Bd. 1986)
KIST Corp., 58 RR 2d 1483 (1985)
LA Super Communications Ltd Partnership, 59 RR 2d 761 (1985)
Mableton Broadcasting Co., Inc. 68 RR 2d 750 (Rev. Bd. 1990)
Magdalene Gunden Partnership, 64 RR 2d 714 (Rev. Bd. 1988)

Marlin Broadcasting of Central Florida, 67 RR 2d 159 (Rev. Bd. 1989)
Metroplex Communications, Inc., 68 RR 2d 475 (1990)
National Communications Industries, 70 RR 2d 800 (1992)
Newton Television Ltd., 67 RR 2d 1143 (1990)
Northampton Media Associates, 65 RR 2d 379 Rev. Bd. 1988)
Ocean Pines LPB Broadcast Corp. 68 RR 2d 577 (Rev. Bd. 1990)
Payne Communications, Inc., 61 RR 2d 1323 (Rev. Bd. 1986)
Pleasant Hope Broadcasting Co., LP, 70 RR 2d 309 (Rev. Bd. 1991)
Poughkeepsie Broadcasting Ltd., 69 RR 2d 323 (1991)
Progressive Communications, Inc., 68 RR 2d 1014 (1990)
Pueblo Radio Broadcasting Service, 68 RR 2d 107 (1990)
Religious Broadcasting Network, 65 RR 2d 56 (Rev. Bd. 1988)
Rancho Mirage Radio, 70 RR 2d 737 (Rev. Bd. 1992)
Royce International Broadcasting, 68 RR 2d 1011 (1990)
SaltAire Communications, Inc., 71 RR 2d 437 (1992)
Scottsdale Talking Machine & Wireless Co., 70 RR 2d 600 (Rev. Bd. 1991)
Signal Ministries, Inc., 60 RR 2d 1700 (1986)
Tulsa Broadcasting Group, 64 RR 2d 457 (Rev. Bd. 1987)
Washoe Shoshone Broadcasting, 64 RR 2d 1748 (Rev. Bd. 1988)